

Middle Rio Grande Endangered Species Act Collaborative Program

Interim Steering Committee

May 25, 2005 Meeting 1:30 – 3:30 p.m.
FWS Ecological Field Service

Agenda

- Introductions
- Organizational Structure
- Proposal Summaries
- Minnow and Water Update
- HR Funding for Albuquerque Reach-Specific Plan
- Discussion with Mic Nelson – Reclamation, SLC
- LTP Update
- Organizational Structure Summary
- Action Items

Introductions

Introduction of InSC members and other participants took place.

Organizational Structure

- Erik Webb summarized the current status of the discussion on the Program organizational structure:
 1. InSC reviewed the organizational structure draft prepared by the workgroup and passed along their revised version to the EC.
 2. EC received the organizational structure from InSC and commented mainly on the size of the decision-making body.
 3. Erik took the concept of the organizational structure as provided by the InSC and EC and discussed it with NM congressional staff: Mike Conner (Sen. Bingaman's office), Colin Hunter (Rep. Heather Wilson's office), and Matt Meagher (Rep. Pearce's office). There was no staff of Rep. Udall's office present at the meeting.
 4. Representatives of the congressional delegation were supportive of the streamlined structure, and Erik left them with the above mentioned comment brought up by the EC. They will make a proposal in June on the structure of the decision-making body.
- Erik has received the assignment from Sen. Domenici to draft the authorizing legislation (AL) as the tool to communicate the structure of the Program, its implementation, and responsibilities of the different bodies (including funding flow). He asked Reclamation and COE how they would perform functions related to water management and funding, respectively.
- Agencies are in the process of responding to Erik's questions; both agencies were responsive and COE expressed concerns with taking over ESA responsibilities.
- It has not been decided yet where the administrative function will be housed.
- Erik needs to provide the draft AL by the end of this week to the other representatives of the NM Congressional delegation, including responsibilities of each body. It is expected that they will provide input by June 6.
- Erik will then meet with Federal agency representatives to see if the plan is complete after the input from the Congressional delegation. The new draft will be presented to InSC, and there will be a period of comment such that and AL can be introduced to Congress in July. In July it will be discussed how transition to new target will take place.

- It is important that the LTP be approved in June and Erik will provide input on activities under the BiOp and outside of the BiOp included in the LTP.
- It is expected that if the LTP includes a lot of activities outside of the BiOp RPA and if BiOp activities are not prioritized in the first years covered by the LTP, it will be hard to get Congress to approve this legislation based on this plan. Activities outside of the BiOp can be included in the LTP; however, the focus of the plan and the main percentage of funding should be to meet the BiOp.
- If BiOp is not met, reconsultation will be initiated and the potential for lawsuits being filed is high.
- The Recovery Plan is not finished either and this is perceived as a problem.
- AL will include the responsibilities of the Program to implement BiOp and reach recovery.
- It is acknowledged that the PEIS is getting caught in the vortex of all these changes, as it is hard to have a comprehensive look at PEIS without a final Program organizational structure and approved LTP.
- Erik presented the following issues as requiring resolution - InSC can make recommendations, as appropriate:
 1. What will be the decision-making body initial composition - Congressional staff does not support the current proposal of approximately 16 members. InSC restated that they have already made a decision at a previous meeting on who should be invited to sign the Cooperative Agreement; current non-Federal members of the InSC can lobby in support of their decision.
 2. How we provide funding to support the Program. The options are Reclamation, FWS, and COE. Several options are available, but senior Congressional staff and DC agencies will make this decision. Which jobs under BO need to be addressed by which agencies? Some assignments are clear, others are not.
 3. What will be the timing of the changes? All changes affect of FY'06 appropriations. It is planned that the AL will be finished early enough to be incorporated in FY'06 appropriations.
- Another question is: how would AL deal with reconsultation on BiOp, if necessary. Current language prioritized requirements of the law, the recovery of the listed species. This is the number one concern. Reconsultation will probably articulate responsibilities for completing required activities. The rigor of writing the categories of activities is important.
- Chronology of AL review – first time non-Federal participants will see it is immediately after Federal participants get a chance to see the draft of the proposed partnership to ensure all elements are captured. This will likely take place the second week in June.

Proposal Summaries

- Pete will pass out summaries after new confidentiality agreement provided by Reclamation for this meeting is signed – a new agreement is needed because this time it will cover all proposals, rather than the subset reviewed by TPEC members. To participate in TPEC reviews, members signed a Conflict of Interest (COI) certificate.
- The information to be distributed includes list of all proposals, current rankings, and project descriptions (goals and objectives) as well as issues raised during TPEC review which are still in negotiations. This is an introduction of InSC members to the current status of proposal review so that they can provide guidance on how to proceed.
- The Confidentiality Agreement provided by Reclamation at this meeting raised concerns that signatories' representatives signing cannot speak to their superiors, which they are representing on the InSC. Also, there are concerns that individuals working for State agencies are subject to State law, such as the Public Records Inspection Act and signing the Confidentiality Agreement would conflict with this state law.

- The COI agreements signed by TPEC members allowed for disclosure of specific issues (but not sharing actual proposals) with other technical people in their organization; this confidentiality agreement allows no discussion of proposal information with anybody who has not signed this agreement. It was decided within Reclamation that at this time, there will be no sharing of information with others within signatory agencies.
- It was mentioned that in the last 3 previous years, final ranking of proposals was done by PMSc and their ranking was provide to the InSC for discussion and approval; it appears that this year we are presenting the information to the InSC in the middle of the process.
- This year, the difference is that outstanding questions on proposals were going through Reclamation to proposers for clarification; this will not be done this year for final rankings.
- Authority with proposals funding always rested with InSC – the technical subcommittees and the PMSc provided guidance and recommendations, they did not have authority in selecting proposals for funding.
- The InSC needs to know what they need to provide at this point in the review such that we can move forward in a rapid manner.
- Because there are issues with individual proposals, maybe TPECs can go back and get questions resolved and complete the final ranking. InSC can work with Reclamation SLC to complete this process.
- The discussion as tabled until Mic Nelson was available for to discuss the concerns by phone later in the day.

Minnow and Water Update

- We are no longer under Article 7 of the Rio Grande Compact.
- As of last Friday, 7,000 cfs were released from Cochiti Lake.
- Nine eggs were caught below San Acacia since last Friday. Eggs release is expected to continue and river staff will watch for peak. There is uncertainty relative to number of eggs in the river – the current catch occurred close to the river banks, as the depth of the water precludes wading in the river channel.
- Overbank monitoring study began. At 5,000 cfs overbanking is expected at Bosque del Apache. At 6,500 cfs, overbanking is expected in the Isleta reach; levee problems are expected as well. There is possible breaching for 20 to 30 miles of river channel.
- Currently we have approximately 3,600 cfs at state line. It is expected to rise to 5,000 cfs. At Embudo, it is expected to be 6,000, maybe as much as 10,000 cfs.
- The levee condition is concerning in the South Valley. COE will make decisions on management of releases from Cochiti Lake.
- Flows in the MRG are rising and expected to peak the following week:
 - Albuquerque – 6,600 cfs
 - Outflow Cochiti - 6,300 fs and rising
 - Approximately 9,000 at Otowi and rising
 - If we reach 9,500 cfs, then we might have problems with flooding in the Espanola Valley
 - Jemez River peaked early in May, now at about 400 cfs and declining.
- FWS is implementing emergency consultation procedures will be used for habitat protection.
- To be expected 5,000 cfs in middle valley into June.
- The Bosque in Valencia Co. is wet, in some places up to 2 feet of standing water are reported. Due to the high flows of water, there is some damage to riverside and interior drains as well as levees.
- MRGCD is concerned with increasing flows because levees will not be able to handle it and asked COE to limit releases form Cochiti. By this meeting time, there was no answer from COE.
- COE is thinking about releasing 7,000 cfs to take off later peaks, as 10,000 cfs is expected later on.

HR Funding for Albuquerque Reach-Specific Plan

- HR requested additional funding for completing the Albuquerque Reach-Specific Plan (in non-Pueblo areas) and suggests using MNA. HRS estimated \$190K for plan and currently the MNA contract ceiling is \$100K. \$100 additional funding is requested.
- Funding would come from the funding set aside for HR purposes. Reclamation asked solicitor's input if this is possible.
- ISC considers there is so much work already done, that not much land is available for future work. \$200K seems too much – four times more than it should cost, in ISC's opinion.
- HRS considers this plan as one of the highest priorities.
- The InSC would like additional information regarding what funding will be spent before they can make a decision on this additional funding and provide a timeline for project completion. There is current concern that this plan will not add value to the Program. The following information is needed for decision-making:
 - A cost breakdown by task
 - A detailed scope of work
 - A definition of the Albuquerque Reach.
 - An explanation why HRS thinks this plan is valuable when others think it will not add value
- ISC, who considered funding this plan themselves, can present to InSC what is done on the river.

Discussion with Mic Nelson – Reclamation, SLC

- This discussion between the InSC members and Mic Nelson was by phone.
- Members of the InSC expressed the following concerns about signing the Confidentiality Agreement as provided by Reclamation:
 1. It will prohibit members to InSC and alternates to discuss matters related to proposals with their principals – who might be in a position to make decisions on proposal funding later on.
 2. For state government signatories, who have to comply with state, local, other law, it will conflict with the requirement to comply with other laws, such as the Public Records Inspection Act (there are some exceptions on procurement in this act). However, in a court of law, state employees are required to comply with this act. Mic will have to discuss this issue with the solicitors.
 3. It was asked why a confidentiality agreement needs to be signed at this stage when there was no requirement to do so in previous years. TPEC members already signed a COI agreement. Mic answered that COI signed was different, and was more restrictive than this agreement provided to the InSC members. A copy of the COI was provided and InSC members noted that the form signed by technical staff referred to just COI not confidentiality (the letter that accompanied the form discussed confidentiality). Consequently, by signing the form, participants in the technical review process did not appear to be bound to confidentiality, but only agreed to be free of COI on the proposals they were reviewing. InSC members think that COI and confidentiality are 2 separate issues. AGO's representative expects that her principals would need to know the status of her work with the InSC and not being able to communicate with them is not acceptable.
 4. Reclamation considers that the COI signed by TPEC members was more stringent. A question was asked if members of InSC were involved as TPEC members, would COI not cover confidentiality issues? Reclamation's point is that during TPEC review process, other technical advisors within signatory agencies were allowed to be informed on certain aspects of proposals, although not entire proposals. InSC members pointed out that the COI has no wording on confidentiality requirements. Information on confidentiality was in the letter accompanying the COI form, but not on the form itself.

5. InSC heard earlier that all information stays confidential forever. The fact that TPEC members did not really sign a confidentiality agreement but a COI, if any information is disclosed it will be hard to determine who divulged the information, TPEC or InSC members. Confidentiality and conflict of interest are two important issues – is has to be determined how do we deal with them and do we rectify the current situation so proposal discussion can take place in InSC. Maybe solicitor's office and state representatives can discuss and reconcile these issues.
- It was noted that InSC will make recommendations for proposal funding based on priorities to Reclamation, but there is a possibility that the EC might not approve these recommendations. Pete was going to make this presentation of proposals in case priorities stated in the RFP have changed. If there are no changes, rankings of proposals should not change. According to Mic, the process is different this year because in the past we did not do all that is required by Reclamation contracting.
 - Reclamation is asking for a process that works for a group of people who represent various entities and also comply with Federal procurement.
 - InSC decided to form a group including Karen, Olga, Steve H., Kara, and Sterling to work on this problem.
 - A suggestion was made that Karen edits the document provided by Reclamation and provide it to Reclamation then proceed from there. This is more efficient than discussing what changes are needed. Edits will be given to Pete, and then distributed to InSC members.
 - A brief was provided on how the contract award recommendation tool place last year – a list of proposals recommended for funding was determined by PMSc based on priorities and the list was provided to the InSC for discussion and approval. Last year, PMSc received authority to compile in synopsis what is proposed for funding with a summary and no rankings – very few requests for additional information were made. It is considered that the process worked well before.
 - Spending for this year is limited, and we will have to determine what funding is available for each category. It was suggested that InSC do this as a working group. Priorities would guide us, but the big picture and details will have to be shared.
 - With the new confidentiality requirements, even if we appoint a group to accomplish the proposed task, participants will still not be able to discuss with their superiors.
 - It was suggested that maybe Pete should answer questions on proposals.
 - The purpose of this agenda item for today's meeting was to make a presentation of status of proposal review and ask for direction for the future.
 - WAMS would prefer to discuss all proposals with all members, rather than separate TPECs reviewing only a few proposals. Members feel they have insufficient information on funding available for each activity category, which makes it hard to determine what should be funded. Information is available in the draft spending plan, but this plan is still in review. The most recent version of this plan will be distributed.
 - Also, there is a perception that we really do not know how much funding is really available after off-the-top items were funded.
 - At this time, some proposals still require additional clarification – which means that we are not at a point where funding decisions can be made by InSC.
 - A question was asked why it took so long to get preliminary rankings.
 - It was suggested that the synopsis of the proposals can be distributed without the associated rankings.

LTP Update

- Comments were received from some of the signatories. We need to determine how we will reconcile all comments.
- As not many comments were received so far, the due date for final comments was extended through this coming Friday, May 27.
- It was suggested that issues are addressed prior to the next InSC meeting and comments are addressed through email to attempt reconciliation; then meet as a group to discuss toward the end.

Organizational Structure Summary

- The organizational structure as decided upon by the InSC was presented to the last EC meeting. The structure was neither overruled nor approved by EC.
- EC members have concerns with large number of members in the decision-making body. They asked how we will become more efficient. There is a perception that at this time InSC is not capable of making collaborative decisions in an effective manner. InSC recognizes that they need to be proactive in improving the way they operate.
- EC considers that more command control is necessary by the action agencies – this control is by action agencies is less desirable by those who hold water rights.
- Examples of how other organizations work were given.
- InSC considers that their problem is not knowing what is going on before members arrive at the meetings. There is a need to get back to having information distributed before meetings so decisions can be made with clear understanding on the topics.
- InSC offered to show Pete what they do for their commission meeting so that he can develop a modified packet to get InSC informed.
- Process needs to be changed and the PM is asked how to change that for the June 14 meeting. Determine how to get proposed packages distributed early enough before the meeting so that there is a clear idea relative what will be discussed and what decisions will have to be made.
- If all InSC members think that that should be part of the future decision-making body, it was decided that they all should write a letter to the Congressional delegation about the actual problem, which is not perceived by InSC as being the large number of participants. This letter would help point out the negative aspects of losing membership.
- InSC perceives that the EC does not seem to have improved on the way decisions are being made for the Program.

Action Items

- Cristina – revise the notes from last InSC meeting and distribute on listserve
- Pete – send to InSC members by e-mail the SOW for the Albuquerque Reach-Specific Plan SOW and additional information regarding: how this reach is defined, explanation of value added, and cost breakdown per each task.
- Karen – edit the Confidentiality Agreement that Reclamation provided to the InSC members according to concerns expressed during meeting; distribute it to other members for review, followed by distribution to all InSC members; after general agreement, send the edited agreement to Reclamation (Mic Nelson) – this item replaces the request that Pete provides Mick Nelson with a list of the InSC members' concerns on the Confidentiality Agreement
- Pete – to provide to TPECs information on remaining funding available for each category after the off-the-top projects have been funded
- Olga – distribute the draft FY '05 spending plan

- Pete – work with TPECs on finalizing the review of the proposals, including clarification of the questions on the proposals; final rankings due by June 8; information should be distributed to InSC members prior to the meeting
- All – provide comments to the LTP by Friday, May 27; comments will be addressed, new version will be distributed by e-mail, and a group may be formed to reconcile any issues before distributing this last version to InSC members prior to the May 14 InSC meeting (when the group seeks approval of this plan)
- Tod – by next Tuesday, draft a letter to the NM Congressional delegation from the non-federal members of the Program regarding the negative aspects of losing the wide membership to the Program; the letter will also outline issues with the current decision process and means to rectify problems; circulate the letter by e-mail and send final version by June 3.

Meeting Attendance –5/25/2005
Attendance

Name	Affiliation
InSC Members	
Tod Stevenson	Co-Chair - NMDGF
Janet Jarratt	Co-chair – APA of the MRGCD
Kara Gillon	Alliance for the Rio Grande Heritage
Chuck Braden	BIA
April Sanders	COE
Joy Nicholopoulos	FWS
Rolf Schmidt-Petersen	ISC
Sterling Grogan	MRGCD
Stephen Farris	NMAGO
Alex Puglisi	Pueblo of Sandia
Lori Robertson	Reclamation
Steve Harris	RGR
Others attending	
Gina LaRocco	Alliance for the Rio Grande Heritage
Larry Bell	FWS
Brian Hanson	FWS
Grace Haggerty	ISC
Elizabeth Zeiler	ISC
Karen L. Fisher	NMAGO
Pete David	Program manager
Peter Kenneth	Assistant Program Manager
Olga Boberg	Reclamation
Adrian Oglesby	Santa Ana Pueblo
Leif Bang	Santo Domingo Tribe
Dave Barz	Santo Domingo Tribe
Callie Gibson	Sen. Domenici's Office
Erik Webb	Sen. Domenici's Office
Cristina Radu	Tetra Tech